

FILED

JAN 29 2013

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

WILLIAM TOMASI,
No. 139518,

A Member of the State Bar

) Case Nos. 11-O-18428 and 12-O-11552

) NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**



1 The State Bar of California alleges:

2 JURISDICTION

3 1. William Tomasi ("Respondent") was admitted to the practice of law in the State of
4 California on December 27, 1988, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 11-O-18428
8 Business and Professions Code, section 6106
[Moral Turpitude – Breach of Fiduciary Duties as Trustee]

9 2. Respondent willfully violated Business and Professions Code, section 6106, by
10 committing an act involving moral turpitude, dishonesty or corruption, as follows:

11 3. In or about 1999, Douglas DeNoce ("DeNoce") created an irrevocable trust ("the
12 trust") for the benefit of his daughter, Savannah DeNoce ("Savannah"), who was at all relevant
13 times a minor and the sole beneficiary of the trust.

14 4. Between in or about 2003 and in or about October 2007, Respondent and Denoce,
15 who at all relevant times was a disbarred attorney, had a personal relationship, a business
16 relationship and an attorney-client relationship.

17 5. In or about 2004, DeNoce asked Respondent to serve as trustee of the trust and
18 Respondent agreed to do so. At the time, the trust consisted of two pieces of real property that
19 were free and clear of any encumbrances or mortgages: 1246 Patricia Avenue, Unit 19, Simi
20 Valley, CA ("the Simi Valley property") and 4182 Lake Harbor Lane, Westlake Village, CA.

21 6. On or about October 21, 2004, Respondent transferred title of the Simi Valley
22 property (which belonged to the trust) to himself.

23 7. On or about January 5, 2005, Respondent encumbered the Simi Valley property using
24 it as collateral for a \$60,000 personal loan. The loan was not for the benefit of Savannah or the
25 trust.

26 8. On or about October 31, 2007, Respondent was replaced as trustee of the trust by
27 attorney Stanley Hilton ("Hilton"). On or about October 31, 2007, Hilton sent a letter to
28 Respondent demanding, among other things, that Respondent return title to the Simi Valley

1 property to the trust and that he remove the encumbrance, and that Respondent provide an
2 accounting for the \$60,000 loan proceeds. Respondent received the letter, but did not respond to
3 it.

4 9. On or about December 27, 2007, Hilton sent a second letter to Respondent
5 demanding that he return title to the Simi Valley property to the trust and that he remove the
6 encumbrance. Respondent received the letter.

7 10. On or about January 2, 2008, Respondent promised to provide an accounting to
8 Hilton for all trust funds, but he did not provide an accounting.

9 11. On or about June 4, 2008, Hilton filed a lawsuit on behalf of both DeNoce and the
10 trust in the case entitled *The Savannah N. DeNoce Trust et. al. v. William Stephen Tomasi, et. al.*,
11 Los Angeles Superior Court Case No. BC392034 ("the breach of fiduciary duty case"). In the
12 breach of fiduciary duty case, the trust again demanded, among other things, an accounting for
13 all trust funds. Respondent had actual knowledge of the trust's demand for accounting.

14 12. On or about December 4, 2008, attorney Julia Berkus ("Berkus") appeared as separate
15 counsel on behalf of the trust in the breach of fiduciary duty case. On or about January 13, 2009,
16 Berkus sent a letter to Kevin Park ("Park"), the Respondent's attorney in the breach of fiduciary
17 duty case, demanding an accounting for the \$60,000 loan proceeds, and demanding that
18 Respondent return title to the Simi Valley property to the trust and that Respondent remove the
19 encumbrance. Respondent had actual knowledge that the trust continued to demand an
20 accounting regarding the loan proceeds.

21 13. On or about September 18, 2009, the court issued an order granting summary
22 adjudication in favor of the trust and against Respondent in the breach of fiduciary duty case.
23 The court found that Respondent breached his fiduciary duties as trustee by failing to act in the
24 best interests of the beneficiary in violation of Probate Code, section 16002(a), by using the trust
25 for his own benefit in violation of Probate Code, section 16004(a), by failing to administer the
26 trust with care in violation of Probate Code, section 16040(a), by improperly transferring trust
27 property and failing to obtain independent review in violation of Probate Code, sections
28 21350(a)(4) and 21351(b), by wrongfully taking trust property in violation of Probate Code,

1 section 859, and by failing to provide an accounting in violation of Probate Code, section
2 16062(a). The court also found Respondent liable for slandering title to trust property because
3 he intentionally quitclaimed the Simi Valley property to himself, individually for his own
4 financial gain. The court found that the appropriate amount of damages was \$478,000, plus
5 costs. Respondent received notice of the court's order.

6 14. On or about September 30, 2009, and only after the court issued its order granting
7 summary adjudication in favor of the trust, Respondent deeded the Simi Valley property back to
8 the trust.

9 15. To date, Respondent has failed to provide a full and complete accounting for the
10 \$60,000 loan proceeds he obtained to Hilton, the trust and successor trustees.

11 16. At all relevant times, Respondent as trustee of the trust owed the following fiduciary
12 duties to the trust and to Savannah: Respondent owed a fiduciary duty to act in the best interests
13 of the trust and not to act to use trust property for his own benefit. Respondent owed a fiduciary
14 duty to account for the trust property to the successor trustee. Respondent owed a fiduciary duty
15 to return the Simi Valley property to the trust and to remove the encumbrance on the property
16 immediately upon demand of the successor trustee. Respondent breached each of these fiduciary
17 duties to the trust and to Savannah intentionally or with gross negligence.

18 17. By breaching his fiduciary duties to the trust and to Savannah intentionally or with
19 gross negligence, by transferring title to the Simi Valley property from the trust to himself, by
20 using the Simi Valley property as collateral for a personal loan to himself in the amount of
21 \$60,000, by failing to return the Simi Valley property to the trust between October 31, 2007 and
22 September 30, 2009, and by failing to fully account to the trust for the \$60,000 loan proceeds
23 between October 31, 2007 and the present, Respondent committed an act involving moral
24 turpitude, dishonesty or corruption.

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1 COUNT TWO

2 Case No. 11-O-18428
3 Business and Professions Code, section 6068(a)
4 [Failure to Comply With Laws – Violation of California Probate Code, section 16002]

5 18. Respondent willfully violated Business and Professions Code, section 6068(a), by
6 failing to support the Constitution and laws of the United States and of this state, as follows:

7 19. The allegations of Count(s) One are incorporated by reference.

8 20. Respondent violated California Probate Code, section 16002 when he transferred the
9 Simi Valley property from the trust to himself and encumbered the property by way of a \$60,000
10 personal loan to himself because the transaction was not in the best interests of the trust.

11 21. By violating California Probate Code, section 16002 when he transferred the Simi
12 Valley property from the trust to himself and encumbered the property by way of a \$60,000
13 personal loan to himself, Respondent failed to support the Constitution and laws of the United
14 States and of this state.

15 COUNT THREE

16 Case No. 11-O-18428
17 Business and Professions Code, section 6068(a)
18 [Failure to Comply With Laws - Violation of California Probate Code, section 16004]

19 22. Respondent willfully violated Business and Professions Code, section 6068(a), by
20 failing to support the Constitution and laws of the United States and of this state, as follows:

21 23. The allegations of Count(s) One are incorporated by reference.

22 24. Respondent violated California Probate Code, section 16004 because he profited from
23 the receipt of \$60,000 personal loan against the Simi Valley property, which amounted to a
24 conflict of interest with the trust and with Savannah.

25 25. By violating California Probate Code, section 16004 when he profited from the
26 receipt of \$60,000 personal loan against the Simi Valley property, Respondent failed to support
27 the Constitution and laws of the United States and of this state.

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1 35. The allegations of Count(s) One are incorporated by reference.

2 36. California Probate Code, section 16062(a) required Respondent to account to the
3 successor trustee (Hilton) upon change of trustee. Respondent violated California Probate Code,
4 section 16062(a) by failing to account to Hilton, the trust and successor trustees.

5 37. By violating California Probate Code, section 16062(a), and by failing to provide a
6 full and complete accounting to Hilton or to the trust at any successor trustee, Respondent failed
7 to support the Constitution and laws of the United States and of this state.

8 COUNT SEVEN

9 Case No. 11-O-18428
Business and Professions Code, section 6068(a)
10 [Failure to Comply With Laws – Violation of California Probate Code, section 21351]

11 38. Respondent willfully violated Business and Professions Code, section 6068(a), by
12 failing to support the Constitution and laws of the United States and of this state, as follows:

13 39. The allegations of Count(s) One are incorporated by reference.

14 40. Respondent did not obtain an independent review from another attorney of the
15 financial transaction whereby he transferred title to the Simi Valley property to himself and then
16 encumbered it as required by California Probate Code, section 21351.

17 41. By violating California Probate Code, section 21351, and by failing to obtain an
18 independent review from another attorney of the financial transaction whereby he transferred
19 title to the Simi Valley property to himself and then encumbered, Respondent failed to support
20 the Constitution and laws of the United States and of this state.

21 COUNT EIGHT

22 Case No. 11-O-18428
Business and Professions Code, section 6106
23 [Moral Turpitude – Fraudulent Transfer of Assets]

24 42. Respondent willfully violated Business and Professions Code, section 6106, by
25 committing an act involving moral turpitude, dishonesty or corruption, as follows:

26 43. The allegations of Count(s) One are incorporated by reference.

27 44. On or about September 29, 2009, Respondent recorded two grant deeds assigning
28 interests in the following two properties to his brother Phillip Tomasi and his father-in-law Jack

1 Grasso: 1136 Del Verde Court, Thousand Oaks, CA ("the Thousand Oaks property") and 3145
2 Old Conejo Road, Newbury Park, CA ("the Newbury Park property"). Respondent transferred
3 his interests in the two properties with the fraudulent intent of avoiding payments of the
4 \$478,000 judgment in the breach of fiduciary duty case.

5 45. On or about October 29, 2009, the court entered a judgment against Respondent in the
6 breach of fiduciary duty case in the amount of \$478,000, plus costs, affirming its September 18,
7 2009 order granting summary adjudication. Respondent received notice of the judgment on or
8 about October 29, 2009.

9 46. By transferring his interests in the Newbury Park and Thousand Oaks properties to
10 his brother and father in law with the fraudulent purpose of preventing the properties from being
11 used to satisfy the judgment in the breach of fiduciary duty case, Respondent committed an act
12 involving moral turpitude, dishonesty or corruption.

13 COUNT NINE

14 Case No. 11-O-18428
15 Business and Professions Code, section 6068(o)(2)
16 [Failure to Report Judgment]

17 47. Respondent willfully violated Business and Professions Code, section 6068(o)(2), by
18 failing to report to the agency charged with attorney discipline, in writing, within 30 days of the
19 time Respondent had knowledge of the entry of judgment against Respondent in any civil action
20 for breach of fiduciary duty, as follows:

21 48. The allegations of Count(s) One and Eight are incorporated by reference.

22 49. Respondent did not report the judgment in the breach of fiduciary duty case to the
23 State Bar within 30 days of the time he had actual notice of the judgment.

24 50. By failing to report the judgment in the breach of fiduciary duty case to the State Bar
25 within 30 days of October 29, 2009, Respondent failed to report to the agency charged with
26 attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the entry
27 of judgment against Respondent in any civil action for breach of fiduciary duty.

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1 COUNT TEN

2 Case No. 11-O-18428 and 12-O-11552
3 Rules of Professional Conduct, Rule 1-320(A)
4 [Sharing Legal Fees with a Non-Lawyer]

5 51. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by
6 sharing legal fees with a person who is not a lawyer, as follows:

7 52. Between in or about 2003 and in or about October 2007, Respondent and DeNoce,
8 who at all relevant times was a disbarred attorney, had a personal relationship, a business
9 relationship and an attorney-client relationship.

10 53. At all relevant times alleged herein, DeNoce was a disbarred lawyer who was not
11 entitled to practice law in the State of California and at all relevant times alleged herein,
12 Respondent had actual knowledge that DeNoce was a disbarred lawyer who was not entitled to
13 practice law in the State of California.

14 54. Between in or about 2003 and in or about October 2007, Respondent employed
15 DeNoce to perform all of the legal work on civil cases in his office under his supervision.
16 DeNoce prepared pleadings, complaints, answers, handled civil discovery and prepared motions
17 and subpoenas.

18 55. Between in or about 2003 and in or about October 2007, Respondent and DeNoce
19 entered into an oral agreement that DeNoce would perform work on civil cases where
20 Respondent charged the client a contingent fee, and that Respondent would split the contingent
21 fees on those cases, with 60% to Respondent and 40% to DeNoce.

22 56. By way of example, Respondent settled a case entitled *Sablick v. Take Five* for a
23 client for \$45,000. Respondent took \$15,000 as his contingent fees on the case, and on August
24 17, 2006, he paid DeNoce \$4,037, which represented DeNoce's 40% share of the settlement, less
25 \$1,963, Respondent had previously advanced to DeNoce.

26 57. By way of example, Respondent also agreed to pay DeNoce 40% of Respondent's
27 contingent fee for his work on a case entitled *Gerken v. Durham Transportation*. On or about
28 October 19, 2007, Respondent paid DeNoce \$21,000 of his portion of the fees in the *Gerken*
case, which was 20% of his portion of the contingent fee as opposed to 40% of his portion of the

1 contingent fee. Respondent stated he was paying DeNoce 20% of his fee instead of 40% of his
2 fee, on the rationale that DeNoce had stopped working on the Gerken case before all services had
3 been completed.

4 58. By entering into an oral agreement to split contingent fees with DeNoce, a disbarred
5 attorney, Respondent shared legal fees with a person who is not a lawyer.

6 COUNT ELEVEN

7 Case No. 11-O-18420 and 12-O-11552
8 Rules of Professional Conduct, Rule 1-311(D)
[Employment of Disbarred Member]

9 59. Respondent willfully violated Rules of Professional Conduct, rule 1-311(D), by
10 employing, associating professionally with, or aiding a person that Respondent knew or
11 reasonably should have known was a disbarred member to engage in activities which constitute
12 the practice of law without serving the State Bar with written notice of the disbarred attorney's
13 employment, as follows:

14 60. The allegations of Count(s) Ten are incorporated by reference.

15 61. Prior to employing DeNoce to work for him, Respondent did not notify the State Bar
16 in writing of his employment of DeNoce, to perform legal services for his clients. Respondent
17 did not notify the State Bar's of his employment of DeNoce to perform legal services for his
18 clients at any time between 2003 and October 2007.

19 62. By failing to provide the State Bar with written notification of his employment of
20 disbarred attorney DeNoce prior to his employment of DeNoce, Respondent employed,
21 associated professionally with, or aided a person that Respondent knew or reasonably should
22 have known was a disbarred member to engage in activities which constitute the practice of law.

23 COUNT TWELVE

24 Case No. 12-O-11552
25 Rules of Professional Conduct, rule 3-700(D)(1)
[Failure to Release Files]

26 63. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1), by
27 failing to release promptly, upon termination of employment, to the client, at the request of the
28 client, all the client papers and property, as follows:

1 64. Between in or about 2002 and in or about October 2007, Respondent represented
2 DeNoce in the following seven misdemeanor criminal cases: Los Angeles Superior Court Case
3 Nos. 2MA01998, 3MA00080, 3MA00510, 6MB0095401, 4SF06988 and 4VN04822 and
4 Ventura Superior Court Case Nos. 2005006279. During the course of his representation of
5 DeNoce, Respondent maintained client files in each of DeNoce's criminal cases.

6 65. On or about October 31, 2007, attorney Hilton sent a letter to Respondent demanding
7 that he return the client files to DeNoce. Respondent received the letter.

8 66. To date, Respondent has not returned the client files to DeNoce.

9 67. By failing to return DeNoce's client files to him between October 31, 2007 and the
10 present, Respondent failed to release promptly, upon termination of employment, to the client, at
11 the request of the client, all the client papers and property.

12 **NOTICE - INACTIVE ENROLLMENT!**

13 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
14 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
15 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
16 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
17 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
18 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
19 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
20 **RECOMMENDED BY THE COURT.**

21 **NOTICE - COST ASSESSMENT!**

22 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**
23 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**
24 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
25 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
26 **PROFESSIONS CODE SECTION 6086.10.**

27 Respectfully submitted,

28 THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: January 21, 2013

By: _____

Kimberly G. Anderson
Senior Trial Counsel

DECLARATION OF SERVICE

by
U.S. CERTIFIED MAIL

CASE NUMBER(s): **11-0-18428 and 12-0-11552**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- ☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**
- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
- ☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**
- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").
- ☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**
Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.
- ☐ **By Electronic Service: (CCP § 1010.6)**
Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
- ☒ (for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 7160 3901 9845 4871 4210 at Los Angeles, addressed to: (see below)
- ☐ (for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
JAMES IRWIN HAM	Pansky Markle Ham LLP 1010 Sycamore Ave Unit 308 South Pasadena, CA 91030	Electronic Address	

- ☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

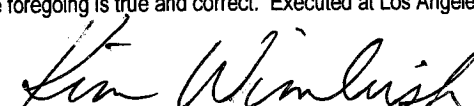
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: JANUARY 29, 2013

SIGNED:


KIM WIMBISH
Declarant